

Meeting with John, Eric and Menchu, 1/15-2014 – 1/17/2014 – Briefing Paper on Oregon 303(d)

Non-Responsive

Direction of 303(d) Program in the next 3-5 years

303(d) List

Non-Responsive

TMDL Development (Jenny, confirm with Gene)

Non-Responsive

TMDL Implementation (Jenny, confirm with Gene)

Non-Responsive

Other Work Directly Affecting TMDL program

- **Non-Responsive** Oregon
CZARA Settlement Agreement actions and negotiations
 - Rulemaking on forestry for increased riparian areas for small and medium fish-bearing streams
 - Ongoing conversations with ODA and ODF for improved implementation
 - Possible increased implementation of existing and new ODA and ODF regulations – a plus (possible response to the CZARA proposed decision)
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Major Program Challenges

- *303(d) List*
 - State's use of "rotating basins" approach
 - Only select parameters are evaluated, so EPA may need to evaluate and add waters – sets the State up for EPA disapproval
 - Evaluating 2 basins/year may be too slow a pace
 - Poor database functions to evaluate data
 - Complicated WQS with no GIS capacity to review data
 - Current ocean acidification litigation and potential NWEA litigation
 - Very limited staff to work on the State's 303(d) listing process
- Temperature TMDL litigation

- Insufficient on-the-ground progress in NPS, especially in agriculture and forestry

Litigation

Non-Responsive

Ongoing Litigation

Non-Responsive

- CZARA Settlement Agreement Actions - NWEA (2011 – present)
 - Potential loss of 319 dollars which support DEQ watershed staff and restoration projects

Potential Litigation or Litigation-Related

Non-Responsive

Noteworthy TMDLs Under Development

Non-Responsive

Potential Resource Needs

Non-Responsive

- Potential loss of resources from a negative CZARA decision.

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Quick Facts on Oregon's 303(d) Program

Staff and Resources:

of 303(d) List Staff (Monitoring, Listing):

of TMDL/NPS Staff (TMDL Project Managers, Modelers, NPS Implementation):

Budget:

of 303(d) Lists completed in the last ten years: (include # of listings in parentheses, if possible)

of TMDLs completed in the last ten years:

Comment [JW1]: The idea behind the quick facts and statewide program efforts in the 3-5 year timeframe is to give the big picture view of the overall program and the areas where we support where the state wants to go.

Direction of 303(d) Program in the next 3-5 years

303(d) List

- Currently out for public comment using “rotating basins” approach
- Covers 2 basins and select parameters

TMDL Development (Jenny, confirm with Gene)

- “Implementation-Ready” Enhanced TMDLs – Midcoast TMDL pilot (April 2012-present)- NOTE: TMDLs are more detailed with greater defined implementation but take much longer to develop and cost more to develop
- Statewide Policy Workgroup on Implementation-Ready TMDLs (since Oct. 2012-present) – objectives of the Policy Workgroup are unclear – group participation is falling off
- Work on non-temperature TMDLs (bacteria, nutrient-related, and toxics)

TMDL Implementation (Jenny, confirm with Gene)

- Integration with Nonpoint Source and Drinking Water Programs
- Higher Quality Reasonable Assurances – Adaptive Resources Management, Coquille
- Integration with 319 and OWEB funding

Other Work Directly Affecting TMDL program

- Possible new natural conditions criteria (NCC) for temperature WQS starting in late 2014
- Oregon CZARA Settlement Agreement actions and negotiations
 - Rulemaking on forestry for increased riparian areas for small and medium fish-bearing streams
 - Ongoing conversations with ODA and ODF for improved implementation
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- Insufficient on-the-ground progress in NPS, especially in agriculture and forestry

Litigation

Relevant Past Litigation

- Temperature Standard WQS litigation (1999, 2004)
- Toxics Standard WQS Litigation 200x? and ESA issues
- TMDL Consent Decree (2000-2010) – completion of 1153 TMDLs
- CBD Ocean Acidification (2008)

Ongoing Litigation

- 303(d) List - CBD Ocean Acidification (10/2013 – Present)
- Temperature TMDL litigation - NWEA (9/2012 – Present)
 - State withdrawal
 - Defending
 - Settlement negotiations (2- or 3-party Settlement)
- CZARA Settlement Agreement Actions - NWEA (2011 – present)
 - Potential loss of 319 dollars which support DEQ watershed staff and restoration projects

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Potential Litigation or Litigation-Related

- 303(d) List – NWEA NOI in 2012
 - ODEQ submitted partial 2010 303(d) List in 2012 after EPA received NOI from NWEA.
 - EPA partially disapproved and added ~1000 waterbodies
 - Received extensive comments from NWEA about state's ability to adequately analyze all readily available data
- Further TMDL litigation if there is no Settlement Agreement
- Temperature WQS if there is a new NCC
- Current FOIAs from NWEA on CZARA and Water Quality Trading

Noteworthy TMDLs Under Development

- Midcoast TMDL – bacteria, sediment
- Willamette TMDL – revised mercury
- Klamath Basin TMDL – lost in the State's reconsideration process

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Potential Resource Needs

- 303(d) list – financial or technical resources to improve database queries and GIS capacity
- TMDL – financial resources for a TMDL that would meet Settlement Agreement objectives for refined allocations and tools to enable more and timely implementation especially for NPS
- Adequate staff to complete a comprehensive 303(d) listing process
- Potential loss of resources from a negative CZARA decision.

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